

BOULDER CITY COUNCIL PROCEEDINGS

December 21, 2010

1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular December 21, 2010 Council meeting to order at 5:00 p.m. in the Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Appelbaum, Cowles, Gray, Karakehian and Morzel. Council Members Ageton and Becker were absent.

2. PUBLIC PARTICIPATION and COUNCIL/STAFF

1) Steve Pomerance spoke on behalf of Citizens for Boulder's Clean Energy Future regarding the Clean Energy study session immediately following the meeting. Option included some variation of an agreement with Xcel Energy or municipalization or a combination of both. He commented that the key was to have legal power for whatever option ultimately chosen. He also suggested that the city proceed in parallel on establishing the criteria for and beginning negotiations with Xcel right away, develop standards for an RFP, RFQ or RFI for independent producers; third, work out all the renewable energies and localization resources and develop all the standards to be met so there are clear expectations and last, develop the ballot language for the November 2011 election. That decision needs to be made by June or July of this year.

2) David Yuhas suggested Boulder get in the wood chip and railroad tie business which would be a spin off that could provide wildfire mitigation. He also suggested utilizing volunteers for weekend projects, noting that in one day, enough people can accomplish amazing things.

3) Suzanne Jones, representing PLAN Boulder County, stated they opposed the Jefferson Parkway and would continue to do so. However, they do support the purchase of Section 16 with additional criteria including: 1) mineral rights should be acquired along with the surface rights; 2) a binding IGA should be negotiated between Boulder and Jefferson County to ensure that once the water and mineral rights are purchased they are transferred to the State Wildlife Department to protect Section 16 in perpetuity and ensure that there is no legal liability for the City of Boulder or Jefferson County with regard to any plutonium present on the property; 3) an Environmental Impact Study should be done on the property to ensure that the property has had thorough remediation of any traces of plutonium; and 4) PLAN Boulder County would like Boulder, Boulder County and Jefferson County to agree to oppose or not allow any restrictions on improvements for safety, maintenance or transit capacity on State Hwy. 93 or any other state highway as result of the Parkway.

4) Debra Williams, Town of Superior Trustee spoke in opposition to the Jefferson Parkway, she presented 5 reasons why the city of Boulder should vote no on the Jefferson Parkway Resolution: 5) The Jefferson Parkway is a highway based transportation plan not a multi model plan, not a smart growth plan and certainly not a mass transit plan; 4) Jefferson Parkway has no plan to connect on either side and will not complete the loop around the Denver metro area; 3) The driving force of the Parkway is development; 2) An Environmental Assessment of the property has not been done; and 1) Taking any control out of the hands of the City of Boulder in exchange for the purchase of Section 16 is a step in the wrong direction. Is the property really worth it?

- 5) Sam Alschuler regarding a recent *Daily Camera* article on options for Orchard Grove agreed with the article that any options are minimal at best. Mr. Alschuler updated the Council noting that nothing was changing in the mobile home park.
- 6) Jane Monson regarding the Jefferson County Parkway indicated opposition stating this was nothing but a bribe for the city to support the building of the Parkway.
- 7) Lewis Wolman with Boulder Bcycle is interested in a partnership with Go Boulder and voiced support of agenda item 3-H. He encouraged Council to look at their website at BoulderBcycle.com.
- 8) Francisa Hantz with CP West Design spoke to the call up of 702 Pine indicating that they would prefer the southeast location for the garage.
- 9) Seth Brigham voiced opposition to the resolution supporting Jefferson Parkway and the lack of a solution for the homeless.
- 10) John Putnum has represented Golden on the Jefferson Parkway and also serves on the Open Space Board of Trustees but has recused himself from any actions on the city of Boulder's part regarding the Parkway. He suggested that many entities need to collaborate on finding the balance in negotiations on this difficult issue.
- 11) Brooke Wise representing Grow in Colorado spoke of two cannabis dispensaries under threat of closure. Asked Council to look for a way to amend the code so that The Flower of Life and New Option Wellness could be allowed to stay open. Explained that it seemed to be due to a technicality in zoning regarding convenience retail with mixed-use residential underlying PUD although no residential was allowed.
- 12) Carl Savitz has had a valid tax license since 2009, yet as the owner of The Flower of Life, indicated that the zoning is creating an issue which may make their location an unapproved use under the property zoning although there isn't any residential in the area.
- 13) Lisa Skumarz, Superior Town Board Member, voiced concerns relating to the impacts to Superior from the Jefferson Parkway. Expressed appreciation, however, for the support being expressed by the Boulder Council for Superior's concerns.
- 14) Jim Hartman, a solar energy businessman spoke to the upcoming study session expressing how great it was to see the city actively participating in the exciting new venue of Clean Energy.

Staff follow-up:

Deputy City Attorney Gehr and Senior Assistant Attorney Kathy Haddock explained that there were a few properties that had underlying zoning of Residential under Convenience Use Retail PUDs. They were also impacted by the change in the acceptable use category for Medical Marijuana going from retail to personal services.

City Manager Brautigam clarified that the medical marijuana ordinance states that any business that does not meet the licensing regulations is required to close. These properties would fall in that category. However, on January 4, 2011, Council would be considering numerous changes to the medical marijuana ordinance. If Council wanted staff to look at this issue as well, then it would seem appropriate to delay sending out letters requiring closure until after the Council had the opportunity to become better informed. Council agreed and asked that staff address those issues in its memo for January 4.

Regarding 24-hour fitness, the City Manager noted that the city didn't mandate low flow indoor fixtures unless a building permit was pulled to install new plumbing, at which time low flow fixtures would be required.

Council Member Morzel responded to the many speakers who addressed the Jefferson Parkway clarifying the attention that had gone into making many of the changes requested by some of the speakers. She also provided an extensive history behind this extremely controversial project and Boulder's efforts to negotiate the best possible outcome for all involved.

3. **CONSENT AGENDA: (ROLL CALL VOTE REQUIRED.)**

- A. **CONSIDERATION OF A MOTION TO APPROVE THE NOVEMBER 30, 2010 SPECIAL COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE NOVEMBER 9, 2010 STUDY SESSION ON THE 2011 STATE AND FEDERAL LEGISLATIVE AGENDA AND 2011 STATE LEGISLATIVE PRIORITIES.**
- C. **CONSIDERATION OF A MOTION TO ACCEPT THE NOVEMBER 30, 2010 CITY COUNCIL STUDY SESSION SUMMARY REGARDING CHILDREN AND YOUTH.**
- D. **ITEMS RELATED TO ACCEPTANCE OF GRANTS FROM THE COLORADO HISTORICAL SOCIETY FOR HISTORIC PRESERVATION PROJECTS AT CHAUTAUQUA AND CONSIDERATION OF A MOTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AGREEMENTS TO CARRY OUT THE TERMS AND CONDITIONS OF THE GRANT AGREEMENTS BETWEEN THE COLORADO HISTORICAL SOCIETY, THE COLORADO CHAUTAUQUA ASSOCIATION AND THE CITY.**
- E. **REMOVED - CONSIDERATION OF A RESOLUTION FINDING THE ANNEXATION PETITION FOR 1000 ROSEWOOD IN COMPLIANCE WITH STATE STATUTES AND ESTABLISHING JANUARY 25, 2011 AS AN ALTERNATIVE DATE FOR PUBLIC HEARING FOR ANNEXATION AND INITIAL ZONING OF THE PROPERTY SHOULD THE JANUARY 18, 2011 CITY COUNCIL MEETING BE CANCELLED. APPLICANT: COBURN DEVELOPMENT, INC. PROPERTY OWNER: DK DEVELOPMENT, LLC.**

THIS ITEM WAS REMOVED FROM THE AGENDA.

- F. **THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7712 AMENDING TITLES 4 AND 6, B.R.C. 1981 TO ESTABLISH REQUIREMENTS FOR CERTIFIED ARBORIST LICENSES AND OTHER REQUIREMENTS RELATED TO THE PLANTING, CUTTING, REMOVING, OR APPLYING OF PESTICIDES TO ANY TREES.**
- G. **THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7753 AMENDING TITLE 2, GOVERNMENT ORGANIZATION, CHAPTER 1, CITY COUNCIL, B.R.C. 1981, TO ADD A NEW SECTION ON COUNCIL MEMBER BENEFITS.**

- H. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ADOPT BY TITLE ONLY AN ORDINANCE AMENDING STANDARDS RELATED TO BICYCLE PARKING AND BICYCLE RENTAL STATIONS ON PUBLIC AND PRIVATE PROPERTY BY AMENDING CHAPTERS 8-6, "PUBLIC RIGHT-OF-WAY AND EASEMENT ENCROACHMENTS, REVOCABLE PERMITS, LEASES AND VACATIONS," 9-7, FORM AND BULK STANDARDS," AND SECTIONS 9-9-6 "PARKING STANDARDS," AND 9-9-21, "SIGNS," B.R.C. 1981; AND SETTING FORTH RELATED DETAILS.**

Council Member Karakehian moved, seconded by Wilson, to approve Consent Agenda items 3A through 3H with item 3E removed from the meeting. The motion carried, 7:0, Ageton and Becker absent.

4. **POTENTIAL CALL-UP CHECKIN:** Opportunity for Council to indicate possible interest in the call- up of an item listed under agenda Item 8-A1.

Council Member Gray indicated interest in calling up the Landmark Alteration certificate for 702 Pine St.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS:** - None.
6. **MATTERS FROM THE CITY MANAGER:** -None.
7. **MATTERS FROM THE CITY ATTORNEY:** - None.
8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. POTENTIAL CALL-UPS: 6:20 P.M.

1. **SITE AND USE REVIEW FOR A CLIMATE CONTROLLED AND SELF STORAGE FACILITY AT 5675 ARAPAHOE. INFORMATION PACKET DATE DECEMBER 16, 2010. LAST OPPORTUNITY FOR CALL-UP IS DECEMBER 21, 2010. APPROVED BY THE PLANNING BOARD 5-1, M. YOUNG OPPOSED, B. HOLICKY ABSENT.**

No action was taken on this item

2. **LANDMARK ALTERATION CERTIFICATE FOR THE ON-SITE RELOCATION AND REHABILITATION OF THE CONTRIBUTING GARAGE AT 702 PINE STREET, PER SECTION 9-11-18 OF THE BOULDER REVISED CODE. (HIS2010-00200). INFORMATION PACKET DATE DECEMBER 16, 2010. LAST OPPORTUNITY FOR CALL-UP IS DECEMBER 21, 2010. APPROVED BY THE LANDMARKS BOARD 3-2, M. GERWING AND J. SPITZER OPPOSED.**

Council Member Gray moved, seconded by Wilson, to call up the Landmark Alteration Certificate for the on-site relocation and rehabilitation of the contributing garage at 702 Pine St.

B. CONSIDERATION OF A RESOLUTION REGARDING JEFFERSON PARKWAY - 6:25 P.M.

Council Member Morzel noted that she had been working on a regional level for the past 15 months to develop a regional vision of the Northwest quadrant of Jefferson County. She also explained that she had served as the City of Boulder Representative on the Rocky Flats Coalition of Local Governments since 1996. She then spoke to the significant achievements that had occurred along the Hwy. 93 corridor during that time that included the prevention of numerous attempts of high density development and ultimately has resulted in designated Open Space. Because of the level of negotiations that she participated in the past 15 months she supported the adoption of the proposed resolution. It would be a first step in a long process that would end in a binding Intergovernmental Agreement. The Rocky Flats Local Stewardship Council would also be an active advocate in addressing plutonium concerns by working with the state legislature.

Mayor Osborne then shared her thoughts about Jefferson Parkway. She noted that there had been a lot written in the Blue Line and the Camera about the Jefferson Parkway in the past month and Council had received several long and impassioned e-mails.

The Mayor noted that while she had only been involved in Rocky Flats/Jefferson Parkway discussions for one year, Council Member Morzel was Boulder's real expert on the history and politics surrounding the Rocky Flats Wildlife Refuge. Ms. Morzel had been a staunch opponent of Jefferson Parkway and Arvada's Candelas development and had lobbied tirelessly for the wildlife refuge that led to the city's acquisition of open space in Jefferson County to block forever the worst of the original development plans. The land west of Colorado 93 from Colorado 72 to the Boulder County line will never be developed, thanks to open space purchases by both the city and County of Boulder and Jefferson County.

The result of holding numerous meetings over the part year landed in a stalemate. Boulder city and County and Golden took a position opposed to the granting of a 300' easement along the eastern boundary of Rocky Flats and advocating for the acquisition of Section 16 (1 square mile of land owned by the State Land Board at the northeast corner of Colorado 93 and 72) as a necessary wildlife corridor between open space acquisitions and the wildlife refuge. Jefferson County and the rest supported the construction of Jefferson Parkway to Hwy. 93 and were against the preservation of any of Section 16, except for the creek drainage and a patch of tall grass prairie along Hwy. 93. It was their position that the 300' easement was set aside to be purchased as Jefferson Parkway right-of-way when the refuge was established unless it could be shown that harm would be done to Rocky Flats.

That stalemate ended in November 2010 when Jefferson County and Golden representatives began to negotiate in earnest about a conceptual design for an improved 93/US 6 through Golden. Jefferson County Commissioner Kevin McCaskey made an offer to contribute approximately half of the purchase price for the surface rights of Section 16 in exchange for the city and county of Boulder relinquishing their opposition to the Parkway.

Through December, Boulder city and County staffs, elected officials and a representative from the Trust for Public Lands met to develop a counter proposal to Jefferson County's offer. This draft resolution may be the first step toward an eventual binding Memorandum of Understanding between the parties.

The Mayor stated that her position was that the issues couldn't go back to the status quo that had prevailed for at least a year. Jefferson County, Broomfield and Arvada are determined to move the Parkway forward. Standing on principles is not a sufficient response. Saying we don't like the Parkway and opposing it on principle was pointless and ineffective at this point in time.

The actual decision before the city was either to work toward an agreement of sorts with Jefferson County or to "lawyer up" and plan to mount a legal campaign against the proponents of the Parkway. The latter course would be expensive and time-consuming with an uncertain outcome.

She further stressed that the Council decision needed to be set in the reality that at a DRCOG meeting earlier in the year the Jefferson Parkway was included in the Regional Transportation Plan. Boulder, represented ably by Councilmember Cowles and Carl Castillo and joined by many allies, made the case that the construction of the Parkway was against good planning principles, sustainability and more. Unfortunately, that position did not prevail.

A legal analysis that was done indicated that there were several possible legal strategies that could be pursued. Given that analysis it is fairly certain that a delay of forward movement of the Parkway could be obtained. The Council could decide to negotiate refinements to the resolution passed by the Jefferson County Commissioners and conclude with a memorandum of understanding, or to begin a long and uncertain legal process. The Mayor indicated that her support would be to pursue an agreement with Jefferson County. Many ideas and improvements to the original draft had already been put on the table, and many had already been incorporated into the resolution before the Council.

Boulder County Commissioner Will Toor then addressed the action taken by the County on this issue. He informed the Council that the Commissioners had approved a resolution that day in support of work towards a regional vision of the northwest quadrant of Jefferson County that was somewhat different from the one before the Council in that it asked that the Jefferson County commissioners commit to the preservation of Section 16 and that if they would put forth five million dollars towards the acquisition of Section 16, Boulder County would agree to put commit some level of funding towards the acquisition and take a neutral position on the construction of the Parkway which would include dropping the opposition to the 300' right-of-way. One caveat to that was that the County did not agree to take a neutral position if there were any requests for state or federal transportation funds. Rather only if it moved forward and a toll road. He then reviewed the numerous benchmark efforts that had successfully deterred tens of thousands of developments on 93 between 93 and Golden. This took over ten years of constant work to achieve. He then pointed out that once the roadway was included on the D.R.C.O.G. transportation plan any ability from Boulder County, the city and other local communities

to prevent it from moving forward was lost. While it may seem to many that we may have lost the war it is important to realize that many significant battles were overwhelmingly won.

Council Member Gray indicated the need to add something that asks the Jefferson County Commissioners to consult with the Town of Superior. Council discussed some ways to include some language to address other communities.

Council Member Appelbaum raised concern about process indicating that over the years Boulder had always opposed the Parkway but now, all of a sudden, the Council needs to take action in an exact opposite direction without an earlier check-in. He then suggested asking for additional concessions. His main concern centered on the use of intent rather than commitment. He also expressed that the preservation of Hwy. 93 needed to be just as high a priority as the acquisition of Section 16 and that security was another area that was not addressed adequately.

Council Member Morzel reminded the Council that this was a resolution and that many of the issues raised would be appropriate to address in Memorandum of Understanding or an Intergovernmental Agreement.

Council Member Morzel moved, seconded by Cowles, to adopt Resolution No. 1088 with the following amendment, delete "It is the Local Governments; intent that" in the second sentence of No. 1 and the addition of "Boulder County" in No. 4.

Council Member Gray offered a friendly amendment to page 2 Under Section 1, to add as paragraph 3, "A pledge by Jefferson County to consult with the Town of Superior and other affected entities" and to add under Section 1 as paragraph 4 "In addition, a pledge by Jefferson County to support acquisition and funding requests to state and federal agencies for lands contiguous with Section 16." Accepted as a friendly amendment.

Council Member Cowles offered a friendly amendment to No.1 to insert "The intent is that the development potential of the land north of Section 16 will not exceed what is currently available under Jefferson County's existing zoning." Accepted as a friendly amendment.

9. **PUBLIC COMMENT ON MATTERS:** 7:30 p.m.

1) Lisa Podmajersky representing the Landmarks Advisory Board was available to answer Council question related to 702 Pine St.

Council Member Wilson asked why the Board had chosen the southwest corner of the property for the garage placement instead of the southeast portion as requested by the applicant.

Ms. Podmajersky indicated that the Board preferred a view of the garage from the street to maintain the historic preservation, with a reasonable stretch, compared to not to moving the building at all, as a contributing structure.

Mayor Osborne asked if the addition and the application to move the garage came in separately. It was clarified that they did which made the relationship of the addition to the garage location a difficult decision.

2) Debra Willams from Superior thanked Council for hearing the testimony and concerns regarding the Northwest Parkway and asked Council to no give up its efforts on this important issue.

3) Lisa Skumarz – Superior Trustee thanked Council for its important leadership in regional issues.

4) Carlo Persichetti from CP West, applicant for 702 Pine – spoke to history of the application of the 702 Pine St. addition and carriage house relocation. He felt the southeast location would be the best site for the carriage house.

5) Jane Monson – inquired as to the plutonium clean-up asking how much was for Jefferson Parkway on Indiana.

Council Member Morzel indicated that she would be happy to send the information relating to plutonium mitigation to Ms. Monson.

10. **FINAL DECISIONS ON MATTERS:** 7:49 p.m.

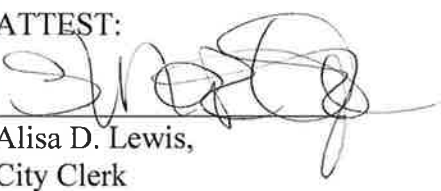
Vote was taken on the motion to call up the Landmark Alteration Certificate for the contributing garage at 702 Pine Street. The motion carried, 4:3, Appelbaum, Cowles, and Osborne opposed, Ageton and Becker absent.

Vote was taken on the motion to adopt Resolution No. 1088 committing to work towards a regional vision of the Northwest Quadrant of Jefferson County as amended. The motion carried 7:0, Ageton and Becker absent.

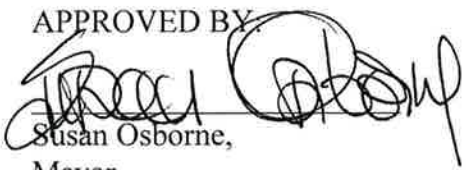
11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 7:54 P.M.

ATTEST:


Alisa D. Lewis,
City Clerk

APPROVED BY:


Susan Osborne,
Mayor